



## DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CECW-P/CECW-O

25 APR 2001

### MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

1. Purpose: This implementation guidance supersedes Policy Guidance Letter No. 49, Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, and provides guidance on implementation of Section 312 of WRDA 90 as amended by Section 205 of the Water Resources Development Act of 1996 (WRDA 96) and Section 224 of the Water Resources Development Act of 1999, dated 17 August 1999. This implementation guidance modifies the policy relative to dredging within the boundaries of a site designated by EPA or a state for a response action (either a removal action or a remedial action) under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq (CERCLA).

#### 2. Background:

a. Section 312 of WRDA 90. Section 312 authorized the Secretary of the Army to remove contaminated sediments from the navigable waters of the United States. There were two distinct authorities in Section 312. Section 312(a) provided for removal of contaminated sediments outside the boundaries of and adjacent to a Federal navigation project as part of the operation and maintenance of the project. Section 312(b) provided for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement if such removal was requested by a non-Federal sponsor and the sponsor agreed to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. Section 312 had an annual expenditure limit of \$10 million for Section 312(b) and a 5-year effective life. The authorities of Section 312 expired on 29 November 1995. At the time of its expiration, no environmental dredging projects had been initiated under Section 312 authority.

b. Section 205 of WRDA 96. Section 205 reestablished and amended the authorities of Section 312 by: (1) providing for removal and remediation of contaminated sediments under the authorities of Section 312(a) and Section 312 (b); (2) raising the annual expenditure limit from \$10 million to \$20 million; (3) deleting the termination date for the authorities of Section 312; and (4) giving priority to work at five locations.

CECW-AA/CECW-OD

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

c. Section 224 of WRDA 99. Section 224 amended Section 312 by (1) changing the non-federal cost sharing from 50 percent to 35 percent; (2) raising the annual appropriation expenditure limit from \$20 million to \$50 million; (3) changing disposal costs to be shared as cost of construction; and, (4) adding three locations to the priority areas. The text of Section 312 as amended is enclosed.

3. General Policy. As a general matter, and consistent with budget priorities, use of the Section 312 authority will be encouraged since the Corps has the expertise to undertake such work and restoration of the Nation's waters is a priority mission area. As a matter of policy, where Section 312 authority is used to remove or remediate contaminated sediments complying with the definition of hazardous substance in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq(CERCLA), such removal or remedial action shall not be undertaken unless the Corps obtains reasonable protection from liabilities, which may arise as the result of the removal or remediation. Such actions will be performed in a manner that (1) identifies all potential responsible parties which contributed to the contaminated sediments being removed or remediated, (2) documents all CERCLA hazardous substances, as defined in 42 U.S.C.9601 (14) that are contained in the contaminated sediments, and (3) pursues cost recovery or other appropriate actions in conjunction with involved federal and state regulatory agencies to assure the "polluter pays" principles of CERCLA are achieved. Removal or remediation at such sites shall be accomplished in consultation with the U.S. Environmental Protection Agency (EPA), non-Federal interests and any identified potential responsible parties. Direct assistance to EPA will continue to be provided on a reimbursable basis for environmental cleanup activities including cleanup dredging and related studies.

4. Policy for Removal and Remediation of Contaminated Sediments Outside the Boundaries of and Adjacent to Federal Navigation Channels ( Section 312(a) of WRDA 90, as amended).

a. Implementation of Section 312(a) may be considered where the contaminated material is located outside and adjacent to a Federal navigation channel and contributes to contamination of material in the Federal navigation channel and it can be demonstrated that the costs of removal and remediation, as appropriate, of the contaminated sediment are economically justified based on savings in future operation and maintenance costs and non-monetary environmental benefits. Savings in future operation and maintenance costs are those associated with reduction in dredging and disposal costs through the reduction of contaminated sediment input into the navigation channel. For example, reduction of contaminated sediment may allow continuation or resumption of open water disposal and elimination of the need for more costly confined disposal.

CECW-AA/CECW-OD

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

b. Implementation of Section 312(a) will require agreement by a non-Federal sponsor to share in the costs related to the disposal of contaminated sediment under cost sharing prescribed by Section 101 of WRDA 86, as amended, for disposal at facilities for O&M of completed navigation projects. Under this policy, disposal costs are considered those costs not directly related to removal (dredging), remediation (treatment), and transport of the material to reasonably proximate disposal sites; and includes those costs associated with lands, easements, rights of way, retaining dikes, bulkheads, embankments, excavation of subaqueous pits, capping/liner requirements, fish and wildlife mitigation associated with the disposal area, and maintenance and management of the disposal area.

5. Procedures for Removal and Remediation of Contaminated Sediments Outside the Boundaries of and Adjacent to Federal Navigation Channels ( Section 312(a) of WRDA 90, as amended).

a. The need to remove and, as appropriate, remediate contaminated sediments outside the boundaries of and adjacent to Federal navigation channels will be identified through dredged material management planning activities.

b. Planning for removal and remediation of contaminated sediments adjacent to Federal navigation channels will include appropriate technical assessments to determine the source(s) of contamination, the areal extent and depth of contamination in areas considered for removal and the time period over which the removal area would remain effectively free of contamination. This assessment will be accomplished in consultation with the Environmental Protection Agency and other appropriate Federal, state and local resource agencies.

c. Planning for removal and, as appropriate, remediation of contaminated sediments adjacent to Federal channels must demonstrate that the recommended cleanup plan is the most cost effective alternative consistent with sound engineering practices and established environmental standards and maximizes net O&M savings considering both Federal and non-Federal costs, provides reasonable protection for potential Corps liability and addresses requirements to assure effect is given to CERCLA's "polluter pays" principle.

d. A feasibility level decision document on removal and remediation of contaminated sediments adjacent to Federal channels will be submitted to HQUSACE for policy compliance review. This report could be a completed dredged material management plan or an interim report. The Operations Division is the dredged material management functional program manager and is responsible for the decision document after HQUSACE policy compliance review is complete.

CECW-AA/CECW-OD

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

e. Based on report (decision document) approval, funding for the contaminated sediment removal and remediation would be sought through the budget process. Funding would be from the Operations and Maintenance, General account. Upon appropriations of funds, negotiation of a PCA will also be completed. Current guidance of the development of an appropriate PCA must be obtained from HQUSACE.

f. The PCA will be submitted to HQUSACE for review and approval including approval by the Assistant Secretary of the Army (Civil Works). Once the PCA is executed, removal and remediation can be initiated.

6. Policy for Removal and Remediation of Contaminated Sediments from the Navigable Waters of the United States for the Purpose of Environmental Enhancement and Water Quality Improvement (Section 312(b) of WRDA 90, as amended).

a. Consistent with Army Civil Works policy and budget priorities, removal and remediation of contaminated sediment from the navigable waters of the United States for the purposes of environmental enhancement (ecosystem restoration) and water quality improvement may be considered for implementation if requested by an appropriate non-Federal sponsor.

b. Implementation of Section 312(b) will require agreement by a non-Federal sponsor to provide 35 percent of the costs of construction, including removal, remediation and transport of the material to reasonably proximate disposal sites. Also, all costs related to the disposal of contaminated sediment, including LERR, are shared as a cost of construction. These requirements are unique to projects under Section 312(b); and the general cost sharing requirements for GNF do not apply. A project under Section 312(b) authority may include removal and disposal of contaminated sediment, removal and remediation of contaminated sediment or remediation of contaminated sediments in place.

c. Priority will be given to work in the following areas:

- (1) Brooklyn Waterfront, New York
- (2) Buffalo Harbor and River, New York
- (3) Ashtabula River, Ohio
- (4) Mahoning River, Ohio
- (5) Lower Fox River, Wisconsin
- (6) Passaic River and Newark Bay, New Jersey
- (7) Snake Creek, Bixby, Oklahoma
- (8) Willamette River, Oregon

CECW-AA/CECW-OD

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

d. Federal expenditures may not exceed \$50 million in a fiscal year to carry out sediment removal and remediation under Section 312(b). There is no per project limit on Federal expenditures under Section 312(b).

7. Procedures for Removal and Remediation of Contaminated Sediments from the Navigable Waters of the United States for the Purpose of Environmental Enhancement and Water Quality Improvement (Section 312(b) of WRDA 90, as amended).

a. If an appropriate non-Federal sponsor requests removal and remediation of contaminated sediments and indicates a willingness and capability to provide the required cost sharing, the removal and remediation project may be considered for a new start for a reconnaissance phase study under the General Investigations account. The budget request will be developed and submitted in accordance with the annual program and budget guidance (Annual Budget EC).

b. Planning for projects to remove and remediate contaminated sediments will be conducted under the two-phase reconnaissance and cost shared feasibility study process. Guidance on the conduct of feasibility studies in ER 1105-2-100 will generally apply except that specific congressional authorization of these projects is not required. Preparation of a feasibility report will meet fully the Section 312(c) requirement for development of a joint plan. Planning for removal and remediation of contaminated sediments should use fully existing sources of information to expedite the study process, provide reasonable protection for the Corps from liability, and address requirements to ensure compliance with the CERCLA's "polluter pays" principle. Sources of information could include dredged material management plans, sediment testing results and other information developed in conjunction with operation and maintenance of Federal navigation projects and the regulatory program.

c. Creative solutions and financial partnerships involving all levels of government should be sought in developing plans for removal and remediation of contaminated sediments. Duplication of Federal programs should be avoided and plans for sediment removal and remediation should recognize appropriate Federal, state and local agency roles. An interagency planning team should be formed to conduct the planning study.

d. Projects for removal and remediation of contaminated sediments will be evaluated and justified as ecosystem restoration projects under the guidance contained in ER 1165-2-501, Ecosystem Restoration in the Civil Works Program.

CECW-AA/CECW-OD

SUBJECT: Implementation Guidance for Section 312 of the Water Resources Development Act of 1990 (WRDA 90), Environmental Dredging, as amended by Section 224 of the Water Resources Development Act of 1999 (WRDA 99)

e. A feasibility level decision document on projects for removal and remediation of contaminated sediments will be submitted to the Director of Civil Works, ATTN: CECW-B, in accordance with the guidance on policy review of decision documents. Specific Congressional authorization of Section 312 (b) projects is not required but the feasibility report for the project must be approved by the Assistant Secretary of the Army (Civil Works).

f. Based on report (decision document) approval, a construction start for the contaminated sediment removal and remediation project will be sought through the budget process.

g. Based on report approval, preconstruction planning and design (PED) studies will be continued using General Investigations funding. A PED agreement will be executed as a condition for initiation of PED studies. PED costs will be subject to 25 percent cost sharing with the non-Federal share credited toward the non-Federal share of the total project cost.

h. The PCA will be submitted to HQUSACE, ATTN: CECW-B, for review and approval including approval by the Assistant Secretary of the Army (Civil Works).

i. The PCA will be executed and project construction initiated.

8. Permanent Guidance. The guidance in this memorandum is being incorporated into permanent guidance.

FOR THE COMMANDER:

  
HANS A. VAN WINKLE  
 Major General, USA  
Director of Civil Works

**Section 312 of the Water Resources Development Act of 1990  
as amended by Section 205 of the Water Resources Development Act of 1996  
and by Section 224 of the Water Resources Development Act of 1999**

**SEC. 312. ENVIRONMENTAL DREDGING.**

(a) OPERATION AND MAINTENANCE OF NAVIGATION PROJECTS.- Whenever necessary to meet the requirements of the Federal Water Pollution Control Act, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) NONPROJECT SPECIFIC.-

(1) IN GENERAL.- The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 35 percent of the cost of such removal and remediation.

(2) MAXIMUM AMOUNT. - The Secretary may not expend more than \$50,000,000 in a fiscal year to carry out this subsection

(c) JOINT PLAN REQUIREMENT.- The Secretary may only remove and remediate contaminated sediment under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) DISPOSAL COSTS. - Costs of disposal of contaminated sediments removed under this section shall be shared as a cost of construction.

(e) LIMITATION ON STATUTORY CONSTRUCTION. - Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) PRIORITY WORK. - In carrying out this section, the Secretary shall give priority work in the following areas:

- (1) Brooklyn Waterfront, New York.
- (2) Buffalo Harbor and River, New York.
- (3) Ashtabula River, Ohio.
- (4) Mahoning River, Ohio.
- (5) Lower Fox River, Wisconsin.
- (6) Passaic River and Newark Bay, New Jersey
- (7) Snake Creek, Bixby, Oklahoma
- (8) Willamette River, Oregon

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